

SERVICE DATE – MARCH 3, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 30186 (Sub-No. 3)

TONGUE RIVER RAILROAD COMPANY, INC.-CONSTRUCTION
AND OPERATION-WESTERN ALIGNMENT

Decided: March 2, 2004

By motion filed November 17, 2003, the United Transportation Union-General Committee of Adjustment and the United Transportation Union-Montana State Legislative Board (UTU-GCA/MT) jointly ask the Board for an order compelling Tongue River Railroad Company, Inc.¹ to furnish a loan agreement (Agreement). According to TRRC, under the Agreement, The Burlington Northern Santa Fe Railway Company (BNSF) agrees to provide TRRC with funds to cover federal and state regulatory expenses. UTU-GCA/MT claims that TRRC has refused to provide the Agreement at UTU-GCA/MT's request.

UTU-GCA/MT believes the Agreement will help reveal TRRC's relationship with a potential carrier/operator of the proposed line, BNSF. UTU-GCA/MT also argues that the Agreement may provide useful information if employee protective conditions are later required. Consequently, UTU-GCA/MT asks the Board to require TRRC to produce the Agreement without confidentiality requirements.

TRRC filed a reply on November 26, 2003. According to TRRC, UTU-GCA/MT's motion is premature because the Board's regulations require a party to file a formal discovery request before filing a motion to compel discovery. TRRC notes that UTU-GCA/MT did not file a formal request, but only asked for the Agreement in a telephone conversation before filing the instant motion. TRRC states that, although it does not concede the Agreement is relevant, it will respond if UTU-GCA/MT files a proper discovery request.

¹ In a decision served September 2, 2003, the Board allowed Tongue River Railroad Company, Inc. to be substituted for Tongue River Railroad Company as the applicant in this proceeding. The UTU-GCA/MT filed a petition for reconsideration of that decision on September 22, 2003. That petition is under administrative review. In the instant decision, the prior and substitute applicants will be referred to collectively as TRRC.

UTU-GCA/MT's motion will be granted. The Agreement is sufficiently relevant to this proceeding to warrant its production. The Agreement is now final and may provide potentially significant information on the relationship between TRRC and BNSF. Because the Agreement may contain commercially sensitive data, however, its production will be subject to the protective order imposed by the Board's decision served on November 18, 2003.

Although UTU-GCA/MT did not file a formal discovery request, it still sought to acquire the Agreement directly from TRRC before filing its motion with the Board. Consequently, TRRC must produce the Agreement, subject to the protective order found in the appendix of the decision served on November 18, 2003.

It is ordered:

1. UTU-GCA/MT's motion to compel discovery is granted subject to the protective order imposed by the decision served in this proceeding on November 18, 2003.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary